

Legislators need to get serious about workers' comp

Costs for workers' compensation insurance have risen in the last decade — a time when workplace injuries declined 29 percent.

Those two facts alone warrant a close legislative look at proposals from Nelson Befitel, director of the state Department of Labor and Industrial Relations, that would address some aspects of workers' comp that have gone awry.

Befitel acknowledges his legislative package is no "silver bullet" that will solve all of the problems. We agree and applaud his department for preparing a comprehensive, thoughtful analysis of workers' comp, one of the most vexing cost centers for businesses large and small.

There are a lot of reasons that workers' comp costs are high — and many of them are beyond the control of state government.

But, as Befitel notes, in 1995 and 1996, the Legislature did make a positive difference.

First, a medical fee schedule was established limiting reimbursement to 110 percent over Medicare. Fraud issues and workplace safety also were addressed.

Then, the Legislature approved starting Hawaii Employers' Mutual Insurance Co. to make sure small businesses could get workers' comp coverage.

It worked!

In an eight-year period, workplace injuries dropped 27 percent and small businesses were able to use Hawaii Employers' Mutual rather than being assigned to a high-risk — and therefore, high-cost — pool.

Workers' compensation seems to be like putting fingers in the proverbial dike. As one set of problems is resolved, another quickly appears.

As a result, Hawaii, which was No. 3 in the country in terms of workers' compensation premiums eight years ago, is back in the same place today. In 2002, \$3.48 of every

Major legislative recommendations

- ◆ Clearly define and delineate who can be an attending physician. Provide a "gatekeeper" system for employees and employers.
- ◆ Define and reasonably manage palliative care to minimize the cost and likely abuse in this area.
- ◆ Redefine employment exemptions, allowing owners of small businesses to be exempt from paying workers' compensation insurance on themselves. This measure exempts anyone having a 40 percent interest in limited liability companies, limited liability partnerships, sole proprietorships and services performed by a partner of a partnership from obtaining workers' compensation coverage.
- ◆ Define Medical Maximum Improvement to clearly establish when an injured employee is entitled to temporary total disability payments versus permanent total disability, and temporary partial disability, or permanent partial disability.
- ◆ Eliminate stress claims resulting from personnel action taken in good faith.
- ◆ Allow for employer-mandated choice of physician.
- ◆ Allow third parties to recommend an actuary to the director, which may be used to update the medical fee schedule.
- ◆ Clearly define acceptable vocational rehabilitation plans to control costs and allow greater employer input.
- ◆ Remove the minimum requirement for injured employees receiving temporary partial disability benefits.
- ◆ Create guidelines for arbitration and mediation of workers' compensation cases to allow and encourage parties to resolve claims through alternative dispute resolution. Arbitration and mediation will be efficient and cost-effective in resolving claims.
- ◆ Allow the Insurance Fraud Unit of the Insurance Commissioner's Office to investigate workers' compensation fraud.
- ◆ Allow emergency room providers to be reimbursed for usual and customary fees, not to exceed 200 percent of Medicare, for emergency room treatment during the first 48 hours after point of injury. This will ensure that injured workers receive the best care and treatment during their critical time of need.

\$100 paid in wages went to workers' comp, an astounding amount, especially considering the flaws in the system.

Befitel says there are three reasons that we are back to No. 3 in spite of a dramatic reduction in workplace accidents and caps on medical fees:

- ◆ Medical doctors treating injured workers for longer periods. In 1995, Befitel says, opponents of medical-fee caps predicted providers would make up the lost income by extended treatment. That's exactly what has happened.
- ◆ Care provided by nonmedical provider: — like chiropractors, massage therapists and physical therapists — can be as much

as 10 times higher than medical doctors. It's clearly an area where treatment costs have spun out of control.

◆ Inadequate control of vocational rehabilitation programs in which employees select counselors without employer involvement. That's extending the length of a claim and sometimes has involved the injured person pursuing an academic program.

Befitel proposed a number of law changes being considered by the House Committee on Labor and Public Employment. Plus, he also plans administrative changes that include expediting workers' comp hearings and clarifying rules and procedures.

It's worth noting that California and

Workers' comp hearing

The decision on whether or not to move House Bill 2486 on workers' comp reform will be decided at a hearing beginning at 9:30 a.m. today while its Senate counterpart, SB 2961, has yet to be scheduled for a legislative hearing.

To voice your opinion on the issue, contact Rep. Marcus Oshiro, chairman of the House Labor and Employment Committee, at 586-8505 or repmoshiro@capitol.hawaii.gov; Sen. Ron Menor, chairman of the Senate Commerce Consumer Protection and Housing Committee, at 586-6740 or at senmenor@capitol.hawaii.gov; and Sen. Brian Kanno, chairman of the Senate Labor Committee, at 586-6830 or at senkanno@capitol.hawaii.gov.

To get a copy of the report, go to <http://dliir.state.hi.us/reports/reports.htm>.

Florida, the states with the highest workers' comp premiums, have undertaken reforms in recent years that have included capping reimbursement for chiropractors.

There are few issues that are of greater concern to business in Hawaii than the cost of workers' comp. And changes in state law like those proposed are only part of the solution.

In the mid-1990s, though, positive legislative response and employer concerns about safety clearly made a difference in addressing workers' comp costs. Other issues impacting costs must now be addressed.

Befitel has prepared a comprehensive overview of workers' compensation issues and offered viable solutions.

We hope legislators take the suggestions as seriously as their counterparts did nearly a decade ago when there was a comparable crisis.